REMARKS

Applicants have amended the claims to point out more clearly that which they consider to be their invention, by canceling Claims 1-49 and replacing them with Claims 50-86. Thus, Claim 50 is drawn to a genus of isolated nucleic acid molecules comprising, among others, a molecule comprising the disclosed promoter portion of the prototypical avian gut specific control region (that is, SEQ ID NO: 2), the complete prototypical avian gut specific control region (SEQ ID NO: 1) and molecules that hybridize and exhibit specified identifies to these prototypes. Support for the amendment claims is provided throughout the application as filed, including, for instance, original Claims 1-49, and in the specification at pages 1-45. No new matter is believed to be introduced by the present preliminary amendment and, therefore, entry and consideration of same is believed proper and is respectfully requested.

The Examiner has required restriction in the instant application as follows:

> I. Claims 1-4, 6-8, 12-16, 18-28, 30-42, drawn to a nucleic acid sequence comprising an avian gut-specific control region comprising SEQ ID NO: 1, a vector comprising said sequence and a method of expressing a heterologous protein in a cell using said sequence, classified in class 435, subclass 320.1.
>
> II. Claims 1-3, 5, 9-15, 17-27, 29-42, drawn to a nucleic acid sequence comprising an avian gut-specific control region comprising SEQ ID NO: 2, a vector comprising said sequence and a method of expressing a heterologous protein in a cell using said sequence, classified in class 435, subclass 320.1.
>
> III. Claims 43-49, drawn to a transgenic avian comprising SEQ ID NO: 1, classified in class 800, subclass 19.
>
> IV. Claims 43-49, drawn to a transgenic avian comprising SEQ ID NO: 2, classified in class 800, subclass 19.
>
> The inventions are said to be distinct, each from the other because of the following reasons:
>
> Groups I and II are patentably distinct because the nucleic acid sequence of Group I comprises coding and non-coding iFABP regions while the nucleic acid sequence of Group II is the iFABP promoter. The burden required to search both SEQ ID NO: 1 and 2 together would be undue. The search required for Group I includes sequences not required in the search in Group II.
>
> Groups I and III are patentably distinct because the nucleic acid sequence can be used to make a probe while the transgenic avian may be used as an ornamental bird. The protocols and reagents required for DNA and for avians are materially distinct and separate. The nucleic acid sequence of Group I does not

require the transgenic of Group III and the transgenic of Group III does not require the nucleic acid sequence of Group I.

Groups I and IV are patentably distinct because the nucleic acid sequence can be used to make a probe while the transgenic avian may be used as an ornamental bird. The protocols and reagents required for DNA and for avians are materially distinct and separate. The nucleic acid sequence of Group I does not require the transgenic of Group IV and the transgenic of Group IV does not require the nucleic acid sequence of Group I.

Groups II and III are patentably distinct because the nucleic acid sequence can be used as a probe while the transgenic avian may be used as an ornamental bird. The protocols and reagents required for DNA and for avians are materially distinct and separate. The nucleic acid sequence of Group II does not require the transgenic of Group III and the transgenic of Group III does not require the nucleic acid sequence of Group II.

Groups II and IV are patentably distinct because the nucleic acid sequence can be used to make a probe while the transgenic avian may be used as an ornamental bird. The protocols and reagents required for DNA and for avians are materially distinct and separate. The nucleic acid sequence of Group II does not require the transgenic of Group IV and the transgenic of Group IV does not require the nucleic acid sequence of Group II.

Groups III and IV are patentably distinct because the transgenic of Group I can be used to overexpress iFABP while the transgenic of Group II can be used to express a heterologous protein in the gut. The protocols and reagents required for a transgenic overexpressing IFABP and for a transgenic expressing a heterologous protein in the gut. The transgenic of Group III does not require the transgenic of Group IV, and the transgenic of Group IV does not require the transgenic of Group III.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I-IV are different, restriction for examination purposes as indicated is proper.

As Applicants presently understand this restriction requirement, new Claims 50-52, 58-66 and 69-86 are believed to correspond to Group I, whereas new Claims 50-57, 63-67 and 69-86 are believed to correspond to Group II.

In response to the Office Action mailed November 7, 2003, which imposed a restriction requirement upon pending Claims 1-49 of the present application, Applicants hereby elect Group II (molecules related to SEQ ID NO: 2), including Claims 50-57, 63-67, 69-86, *with traverse*.

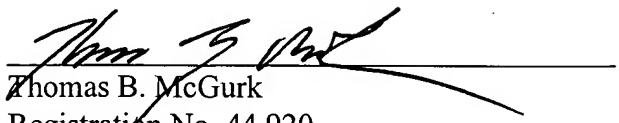
The Examiner's attention is respectfully drawn to the fact that Claims 50, 63, 77, 78 and 84 are generic to all claimed embodiments and, hence, are believed to be linking claims that link the proposed inventions of Group I and II, in accordance with 37 C.F.R. §1.141. *See*, MPEP §809.03. Applicants further believe that the embodiments relating to SEQ ID Nos: 1 and 2 represent different species of a common genus defined by the generic claims and, hence, restriction should be considered under the procedure for generic linking claims. *See,* M.P.E.P. §809.02. Further still, Applicants believe that since SEQ ID NO: 2 is completely included within SEQ ID NO: 1, the proposed Groups I and II are further related as a sub-genus to a genus; that is to say, Group II embodiments relating to SEQ ID NO: 2 include all embodiments of Group I relating to SEQ ID NO: 1, since SEQ ID NO: 1 is but one species of Group II molecules which comprise SEQ ID NO: 2. Accordingly, Applicants believe that restriction requirement dividing the genus into two inventions, a sub-genus (Group II) and a sub-genus of that first sub-genus (Group I), is improper and should be withdrawn.

At the least, if SEQ ID Nos: 1 and 2 are seen as separate species, Applicants hereby elect the species relating to SEQ ID NO: 2 (proposed Group II) with the understanding that the main generic claims will be treated as linking all claimed species and, therefore, upon finding allowability of the generic claims with respect to the elected species, the restriction requirement as to the proposed linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application. *See* MPEP §809.02(b) Meanwhile, the Examiner is respectfully reminded that where the requirement for restriction in an application is predicated upon the non-allowability of generic or other type of linking claims, Applicant is entitled to retain in the case claims to the non-elected invention or inventions. *See*, MPEP §809.04.

Applicants believe that the present case is in condition for substantive examination and allowance and respectfully request early notice to that effect.

If any issues remain to be addressed in this matter, which might be resolved by discussion, the Examiner is respectfully requested to call Applicants' undersigned counsel, David J. Hayzer, at the number indicated below.

Respectfully submitted,



Thomas B. McGurk
Registration No. 44,920
David J. Hayzer, J.D., Ph.D.
Registration No. 43,329
Attorneys for Applicants

Womble Carlyle Sandridge & Rice, PLLC
3500 One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309
Telephone: (404) 872-7000
Facsimile: (404) 879-2994
Customer Id No.: 26158
Docket No.: A181 14040